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No. 10-276

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In The Supreme Court of the United States

ROBERT C. BRUNER, et al.,

Petitioners,

vs.

BERT HARTSFIELD, in his official capacity as Property Appraiser of Leon County, Florida, et al.,

Respondents.

On Petition For A Writ Of Certiorari To The Florida First District Court Of Appeal

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether Florida's ad valorem taxation cap on annual increases to the assessed valuations of property used as a homestead and corresponding "portability" provision violate the Right to Travel under the Privileges and Immunities Clause of the U.S. Constitution.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED	i
TABLE OF AUTHORITIES	iii
STATEMENT OF THE CASE	1
ARGUMENT	8
A. THIS COURT DECIDED THIS ISSUE IN *NORDLINGER*	8
1. SOHA AND AMENDMENT 1 ARE NOT DURATIONALLY STRUCTURED BASED ON LENGTH OF RESIDENCY	11
2. RATIONAL BASIS ANALYSIS WAS PROPERLY APPLIED BELOW	17
3. AS WAS THE CASE IN *NORDLINGER*, THESE PETITIONERS LACK STANDING TO BRING THIS CLAIM	19
CONCLUSION	21

TABLE OF AUTHORITIES

Page

CASES

Allen v. Wright, 468 U.S. 737 (1984) 19

Attorney General of New York v. Soto-Lopez, 476 U.S. 898 (1986) 12, 17

Baldwin v. Fish & Game Comm'n of Montana, 436 U.S. 371 (1978) 17

Caplin & Drysdale v. United States, 491 U.S. 617 (1989) 19

Columbus-Muscogee County Consol. Gov't v. CM Tax Equalization, Inc., 579 S.E.2d 200 (Ga. 2003) 15

Deluccio v. Havill, 25 So. 3d 31 (Fla. 1st DCA 2009) 7, 8

Deluccio v. Havill, 35 Fla. L. Weekly D2052 (Fla. 1st DCA Sept. 13, 2010) 7

Dunn v. Blumstein, 405 U.S. 330 (1972) 11

Heckler v. Mathews, 465 U.S. 728 (1984) 18

Hooper v. Bernalillo County Assessor, 472 U.S. 612 (1985) 11, 12

Lanning v. Pilcher, 16 So. 3d 294 (Fla. 1st DCA 2009) 6, 7

Lanning v. Pilcher, 37 So. 2d 847 (Fla. 2010) 7

Lunding v. New York Tax Appeals Tribunal, 522 U.S. 287 (1998) 4

TABLE OF AUTHORITIES – Continued

Page

Maxwell v. Bugbee, 250 U.S. 525 (1919) 4

Memorial Hospital v. Maricopa County, 415 U.S. 250 (1974) 11, 17

Moose Lodge No. 107 v. Irvis, 407 U.S. 163 (1972) 19

Nordlinger v. Hahn, 505 U.S. 1 (1992) ..... *passim*

Nordlinger v. Lynch, 225 Cal.App.3d 1259 (Cal. Ct. App. 1990) 9

Osterndorf v. Turner, 426 So. 2d 539 (Fla. 1982) 2, 12

Reinish v. Clark, 765 So. 2d 197 (Fla. 1st DCA 2000) 2, 4, 5, 6, 17

Reinish v. Clark, 790 So. 2d 1107 (Fla. 2001) 4

Reinish v. Clark, 534 U.S. 993 (2001) 4

Saenz v. Roe, 526 U.S. 489 (1999) 8, 12

Shaffer v. Carter, 252 U.S. 37 (1920) 18

Shapiro v. Thompson, 394 U.S. 618 (1969) 11, 13

Smith v. Welton, 729 So. 2d 371 (Fla. 1999) 3

Toomer v. Witsell, 334 U.S. 385 (1948) 13

Zingale v. Powell, 885 So. 2d 277 (Fla. 2004) 3

Zobel v. Williams, 457 U.S. 55 (1982) ... 12, 13, 14, 15, 16

FLORIDA CONSTITUTIONAL PROVISIONS & STATUTES

Fla. Const. art. VII, § 4 ..... 6, 15

Fla. Const. art. VII, § 4(d) 3

TABLE OF AUTHORITIES – Continued

Page

Fla. Const. art. VII, § 4(d)(1) 2
Fla. Const. art. VII, § 4(d)(8) 3
Fla. Const. art. VII, § 6 ..... 2, 3, 15
Fla. Const. art. X, § 7 2
Flat. Stat. § 193.155 ..... 1, 3
Fla. Stat. § 196.011(1)(a) 2, 3

U.S. CONSTITUTIONAL PROVISIONS AND FEDERAL STATUTES

42 U.S.C. § 1983 5
42 U.S.C. § 1988 5

OTHER AUTHORITIES

Fla. Admin. Code R. 12D-8.0062 16

STATEMENT OF THE CASE[1]

Petitioners, relocated resident owners of homestead property in Florida, seek review of a Florida constitutional provision which caps annual increases in assessed valuation for property used as a homestead and provides a "portability" option for homeowners. Article VII, section 4, Florida Constitution, commonly known as the Save Our Homes Amendment (SOHA), along with its implementing statute, section 193.155, Florida Statutes, constitutionally limits increases in the annual assessed value for these homestead properties to three percent of the assessment for the prior year, or the percent change in the Consumer Price Index, whichever is less. The portability feature, added by constitutional amendment in 2008, allows homestead owners to transfer all or a portion of any benefit received under the SOHA to a new Florida homestead.

This challenge comes eighteen years after a similar acquisition value system of taxation was upheld by this Court's decision, *Nordlinger v. Hahn*, 505 U.S. 1 (1992), despite "staggering" differences in tax burdens. The Florida trial court and court of appeal that heard this case expressly rejected Petitioners' claim that the cap provided by the SOHA, including portability, violates the Right to Travel doctrine of the Privileges and Immunities Clause, or

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[1] References to the Petition and its Appendix are cited as "Pet. ___" and "Pet. App. ___," respectively.

the Equal Protection Clause, citing *Nordlinger* and the relevant Florida precedent, *Reinish v. Clark*, 765 So. 2d 197 (Fla. 1st DCA 2000). The Florida Supreme Court denied Petitioners' petition for review to that court.

Under the constitutional and statutory provisions of the State of Florida, all persons having legal or equitable title to real estate and maintaining a permanent residence thereon qualify for Florida's homestead exemption, regardless of whether the property owner is a life-long citizen of Florida or a recent migrant. Fla. Stat. § 196.011(1)(a). In Florida, the protection of the primary home has a history of special significance. *See Osterndorf v. Turner*, 426 So. 2d 539, 540 (Fla. 1982). Under the Florida Constitution, homestead property has been protected from forced sale since 1868. Florida's citizens first created a $5,000 property tax exemption on a homeowner's residence in 1934. Fla. Const. art. X, § 7 (1885) (as amended); *Osterndorf*, 426 So. 2d at 540. In 1980, Florida voters increased the exemption to $25,000. Fla. Const. art. VII, § 6 (Pet. at 7). Although a previous version of the exemption was struck down in part by the Florida Supreme Court because it contained a five-year residency prerequisite, the current version does not have any such requirement. *Osterndorf*, 426 So. 2d at 545.

In 1992, in an effort to keep the taxes on their homes manageable, Florida voters approved the SOHA cap on the annual increase to assessed valuations of homestead property. Fla. Const. art. VII,

§ 4(d)(1). The SOHA "was designed to ensure that citizens on fixed incomes will not lose their homes on the tax block due to the rising value of Florida property." *Smith v. Welton*, 729 So. 2d 371, 373 (Fla. 1999). In January 2008, voters approved Amendment 1, which allowed the SOHA cap to become "portable," meaning that all or a portion of a property owner's existing benefit under the SOHA, if any, may be transferable to a newly-established Florida homestead. Fla. Const. art. VII, § 4(d)(8). Amendment 1 also increased the existing homestead exemption. Fla. Const. art. VII, § 6.

By definition, the SOHA cap and portability applies to properties which receive the homestead exemption. Fla. Const. art. VII, § 4(d); Fla. Stat. § 193.155; *Zingale v. Powell*, 885 So. 2d 277, 285-86 (Fla. 2004) (providing both the exemption and SOHA cap are "parts of a coordinated constitutional scheme relating to taxation and have as their underlying purpose the protection and preservation of homestead property"). There is no durational residency requirement to receive any benefit under the Florida homestead provisions. First-time applicants are only required to show proof of ownership and supply their social security number. Fla. Stat. § 196.011(1)(a).

In 1998, Chicago residents who owned a parcel of land in Florida brought a challenge to the constitutionality of the homestead exemption and to the SOHA on the grounds that they violated the Equal Protection Clause, the Privileges and Immunities Clause, including the Right to Travel, and the

"dormant" Commerce Clause. *Reinish*, 765 So. 2d at 201. The trial court dismissed the complaint based on the plaintiffs' failure to state a claim, and the First District Court of Appeal affirmed. *Id.* at 215. That court, relying primarily on *Nordlinger* and *Lunding v. New York Tax Appeals Tribunal*, 522 U.S. 287 (1998), ruled that the underlying classification in the exemption (which is the same for the SOHA) is based on the *use* of the property, not the *user*. *Reinish*, 765 So. 2d at 205-06. The First District found that the United States Constitution does not preclude states from adopting "justified and reasonable distinctions between residents and nonresidents in the provision of tax benefits" and that inequalities that result only occasionally and incidentally in the application of a tax system that is not arbitrary in its classification do not defeat the law. *Id.* at 208-209 (citing *Lunding,* 522 U.S. at 310; *Maxwell v. Bugbee*, 250 U.S. 525, 543 (1919)). Although review of the *Reinish* decision was sought, it was denied both by the Florida Supreme Court and this Court. 790 So. 2d 1107 (Fla. 2001); 534 U.S. 993 (2001).

Between 2004 and 2007, each of the Petitioners chose to move from their respective states to Florida and seek the benefits of Florida's homestead exemption, and the SOHA. (Pet. at 12-13; Pet. App. at 24a-26a). In 2008, each Petitioner was able to vote on Amendment 1, which established the additional benefits of portability and an increased homestead exemption amount. (Pet. at 12-13, 4-6).

In November 2007, Petitioners brought suit, seeking a declaration that the SOHA cap is unconstitutional under the Equal Protection Clause of both the U.S. and Florida Constitutions and the Right to Travel. After the Florida voters approved "Amendment 1" to the Florida Constitution on January 29, 2008, the Petitioners amended their complaint to challenge the new portability feature. (Pet. App. at 20a-68a). They sought to permanently enjoin the Florida Department of Revenue, various tax collectors, property appraisers, counties, cities, and school boards ("Respondents") from taxing their homestead properties under SOHA or applying the portability provision of Amendment 1. (Pet. App. at 61a) Petitioners further asked for a refund of taxes paid under SOHA as well as pre-judgment and post-judgment interest for four years, and an award of attorney's fees. (Pet. App. at 57a-58a).[2]

Respondents filed various motions to dismiss, which the trial court granted. (Pet. App. at 8a-18a). The trial court held that *Nordlinger* and *Reinish* were dispositive "[a]s to any claim by the [Petitioners] that SOHA violate[s] the identified provisions of the Constitution of the United States due to their residency status." (Pet. App. at 12a). The trial court reasoned that the SOHA benefits "have a rational and

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[2] Plaintiffs also sought declaratory, supplemental, and injunctive relief pursuant to 42 U.S.C. § 1983 and attorney's fees pursuant to 42 U.S.C. § 1988, but abandoned those arguments on appeal after being dismissed at the trial level.

legitimate basis that is unrelated to residency," and that "the protections contained in SOHA apply to all citizens regardless of the length of time Florida has been his or her residence." (Pet. App. at 13a-14a). Finally, the trial court found it important that each of the Petitioners "start[ed] off on the same footing, and the protections against tax increases are the same based upon market conditions and the value of the property as determined by appraisal and assessment from year to year." (Pet. App. at 14a). The Court concluded that "*Nordlinger* clearly established the principle that a state legislature's interest in 'neighborhood preservation, continuity and stability' provided a rational basis for treating new and older residents differently in their tax assessments." *Nordlinger*, 505 U.S. at 12-13. (Pet. App. at 13a).

On appeal, the First District affirmed, emphasizing that the matter had already been conclusively decided on both the federal and state levels, finding:

> This court has already considered and rejected virtually identical constitutional challenges to SOHA in *Reinish v. Clark*, 765 So. 2d 197 (Fla. 1st DCA 2000) and *Lanning v. Pilcher*, 16 So. 3d 294 (Fla. 1st DCA 2009). The holdings in *Reinish* and *Lanning* that section 4, article VII is not unconstitutional for the reasons claimed are not changed by the passage of Amendment 1.

(Pet. App. at 5a-6a). The Florida Supreme Court declined to accept jurisdiction of Petitioners' appeal from the First District. (Pet. App. at 19a).

As Petitioners note, this is chronologically the second of three similar cases challenging the SOHA in the Florida courts since 2007. The first of these cases is a challenge brought by out-of-state owners of second or vacation homes within Florida against the SOHA cap based on the dormant Commerce Clause, the Privileges and Immunities Clause, the Right to Travel, Equal Protection, and Due Process. However, unlike this case, the homeowners did not challenge portability, as suit was brought before the passage of Amendment 1. The challenge was rejected by the trial court, and affirmed on appeal to the Florida appellate court. *Lanning v. Pilcher*, 16 So. 3d 294 (Fla. 1st DCA 2009). As in this case, the Florida Supreme Court denied review, 37 So. 3d 847 (Fla. 2010), and the challengers filed a Petition for a Writ of Certiorari with this Court, in Case No. 10-281.

The final case is a challenge of out-of-state owners of second or vacation homes to the SOHA and the new portability provision under the dormant Commerce Clause and Privileges and Immunities Clause. The trial court ruled the SOHA, as amended, constitutional and dismissed the case. However, the court also dismissed the case for lack of subject matter jurisdiction. *Deluccio v. Havill*, 25 So. 3d 31 (Fla. 1st DCA 2009). The Florida First District ruled this was error, and reversed and remanded on this basis. *Id.* On remand, the court entered an order ruling that the SOHA and the portability provision are constitutional. The Florida First District has affirmed that order. *Deluccio v. Havill*, 35 Fla. L.

Weekly D2052 (Fla. 1st DCA Sept. 13, 2010). The *Deluccio* plaintiffs have sought review of the decision in the Florida Supreme Court.

ARGUMENT

A. THIS COURT DECIDED THIS ISSUE IN *NORDLINGER*.

This case does not warrant further review, as an analogous tax structure was upheld by this Court in an 8-1 decision in *Nordlinger*, which remains the established law on this subject. 505 U.S. 1 (1992). Despite Petitioners' attempts to distinguish their case as one raising a challenge falling under the "Right to Travel" doctrine of the Privileges and Immunities Clause under this Court's analysis in *Saenz v. Roe*, 526 U.S. 489 (1999), the Petitioners' arguments do not establish any violation of such a right. Instead, their claim is nothing but a reargument of the issues raised and decided in *Nordlinger*.

In *Nordlinger*, California homeowners saw their taxes on their homes double or triple as the median price of homes dramatically increased due to a boom in the real estate market. 505 U.S. at 4. In response to such runaway increases, which outpaced growth in income and ability to pay the assessments, California voters adopted Proposition 13, which capped real property taxes at one percent of a property's full cash value. In addition, there was a two percent cap on annual increases in the assessed valuations. *Id.* at 5.

The new provisions also contained an exemption which allowed certain homeowners to have a portability option. *Id.*

Over time, California's system created "dramatic disparities in the taxes paid by persons owning similar pieces of property" which resulted in "staggering" differences between the amounts paid by homeowners, because the value was re-set when the property changed hands. *Id.* at 6. After purchasing her house in 1988, Ms. Nordlinger paid taxes that were five times more than some of her neighbors, who had owned comparable homes for a number of years. *Id.*

Ms. Nordlinger argued that the effect of the taxing plan infringed on the constitutional Right to Travel and warranted heightened Equal Protection Review. *Id.* at 9. The trial court dismissed the complaint, and the California Court of Appeal affirmed, finding that the law was supported by at least two rational bases. *Id.* at 8; *Nordlinger v. Lynch*, 225 Cal.App.3d 1259, 1273 (Cal. Ct. App. 1990). The Court of Appeal also rejected the idea that the system infringed upon the Right to Travel because the system "bases each property owner's assessment on acquisition value, irrespective of the owner's status as a California resident or the owner's length of residence in the state." *Nordlinger*, 505 U.S. at 9. Any benefit to longtime California residents was deemed "incidental." *Id.* After the Supreme Court of California denied review, this Court granted certiorari. *Id.*; 502 U.S. 807 (1991).

Ms. Nordlinger's claim that California's system infringed upon the constitutional right to travel was dismissed at the onset of this Court's review. Her allegations that the portability exemptions to California's taxing plan required heightened review were dismissed because Ms. Nordlinger herself had not "been impeded from traveling or settling" within the state, and had, in fact, lived in California prior to being affected by the taxing scheme. *Id.* at 10-11. The Court dismissed her remaining claims under a rational basis review, finding first, "the State has a legitimate interest in local neighborhood preservation, continuity, and stability," and second, "the State legitimately can conclude that a new owner at the time of acquiring his property does not have the same reliance interest warranting protection against higher taxes as does an existing owner." *Id.* at 12.

This case is nearly identical, and is supported by the same rational bases. Florida voters amended their state Constitution to provide homestead owners with a system of tax stability in the face of dramatically rising property values. (Pet. at 3-6). The Florida courts properly followed the precedent of this Court by rejecting Petitioners' contention that the SOHA and portability provision presented Equal Protection and Right to Travel violations.

1. SOHA AND AMENDMENT 1 ARE NOT DURATIONALLY STRUCTURED BASED ON LENGTH OF RESIDENCY.

Petitioners incorrectly characterize SOHA and Amendment 1 as being "durationally structured benefits" akin to those this Court has found unconstitutional in numerous other circumstances. (Pet. at 15-16). Petitioners compare apples to oranges. Although Petitioners later acknowledge that the SOHA and portability are not "a typical durational residency regulatory scheme" (Pet. at 26-27), Petitioners erroneously cite and attempt to compare Florida's SOHA to laws which were struck down for containing exactly such a durational residency requirement. In *Shapiro v. Thompson*, 394 U.S. 618 (1969), the Court struck down three laws that expressly prevented the provision of welfare payments to persons who had resided within Pennsylvania, Connecticut, or the District of Columbia for less than a year. *Id.* at 622-627. In *Dunn v. Blumstein*, 405 U.S. 330 (1972), Tennessee required voters to reside in-state for 12 months and in-county for three months before granting them the right to vote. *Id.* at 333. In *Memorial Hospital v. Maricopa County,* 415 U.S. 250 (1974), Arizona required indigents to reside in the same county for 12 months before gaining entitlement to free nonemergency medical care. *Id.* at 252. In *Hooper v. Bernalillo County Assessor*, 472 U.S. 612 (1985), New Mexico granted annual property tax exemptions to residents who served in the Armed Forces, but expressly limited the exemptions based on

the date of residency. *Id.* at 614. In *Attorney General of New York v. Soto-Lopez*, 476 U.S. 898 (1986), New York expressly gave preference in its hiring of civil servants to New York residents who were veterans who served during time of war and had resided within the state at the time of entering military service. *Id.* at 900. In *Saenz v. Roe*, 526 U.S. 489 (1999), California enacted a statute expressly limiting the maximum welfare benefits available to families that resided within the state for less than 12 months. *Id.* at 492.

By contrast, nothing in SOHA or Amendment 1 in any way limits the rights of recently-migrated Florida residents to obtain the exact same benefits and entitlements as life-long Florida residents. There is no express provision of either SOHA or Amendment 1 which in any way distinguishes between Florida citizens based on their length of state residence. Although at one time the Florida homestead exemption contained a five-year residency prerequisite, this was struck down in 1982, and never reinstated. *Osterndorf v. Turner*, 426 So. 2d at 545. Thus, the above cited cases relied on by Petitioners are inapposite.

In the case principally relied upon by Petitioners, *Zobel v. Williams*, 457 U.S. 55 (1982), the Court struck down an Alaska statute which fixed permanent distinctions between its citizens based on their length of residency, and used those distinctions to differ the distribution of income derived from the sale of natural resources in the state. *Id.* at 56. However,

Petitioners do not base their reliance on the *Zobel* majority opinion, wherein the Court rejected the connection between the statute and the Privileges and Immunities Clause:

> The Alaska statute does not simply make distinctions between native-born Alaskans and those who migrate to Alaska from other states; it does not discriminate only against those who have recently exercised the right to travel, as did the statute involved in *Shapiro v. Thompson*, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969). The Alaska statute also discriminates among long-time residents and even native-born residents. For example, a person born in Alaska in 1962 would have received $100 less than someone who was born in the State in 1960. Of course the native Alaskan born in 1962 would also receive $100 less than the person who moved to the State in 1960.
>
> *The statute does not involve the kind of discrimination which the Privileges and Immunities Clause of Art. IV was designed to prevent.* That Clause "was designed to insure to a citizen of State A who ventures into State B the same privileges which the citizens of State B enjoy." *Toomer v. Witsell,* 334 U.S. 385, 395, 68 S.Ct. 1156, 1161, 92 L.Ed. 1460 (1948). *The Clause is thus not applicable to this case.*

Id. at 59, n.5 (emphasis added).

Instead, Petitioners rely on language in the concurring opinions regarding the inequity of a state mandating a difference in the provision of its benefit based on the length of residency within that state. *See id.* at 68 (Brennan, J., concurring):

> For if each State were free to reward its citizens incrementally for their years of residence so that a citizen leaving one State would thereby forfeit his accrued seniority, only to have to begin building such seniority again in his new State of residence, then the mobility so essential to the economic progress of our Nation, and so commonly accepted as a fundamental aspect of our social order, would not long survive.

See also, id. at 73 (O'Connor, J., concurring) ("Alaska's distribution plan distinguishes between long-term residents and recent arrivals. Stripped to its essentials, the plan denies non-Alaskans settling in the State the same privileges afforded longer term residents.").

Petitioners essentially allege that this language equates Alaska's explicit grant of extra payments based solely on the length of residency in Alaska that the Court struck in *Zobel* to SOHA and Amendment 1, which give no preferential treatment based on the number of years of state residency. Such an argument ignores the clear lack of any reference at all to state residency in SOHA or Amendment 1. Based on the plain language of the Florida homestead exemption

and the SOHA, contained in Article VII, sections 4 and 6, Florida Constitution, all homestead owners are treated *exactly the same*. All have the rights to the SOHA cap and portability, and all homesteads are assessed as of January 1st. Although the SOHA results in certain differences in assessed value from property to property, whatever disparity exists between long-term residents and more recent arrivals is primarily the result of market-related forces, and is not proportionate to length of residency. This type of acquisition value assessment system was approved by this Court in *Nordlinger*. *See also, Columbus-Muscogee County Consol. Gov't v. CM Tax Equalization, Inc.*, 579 S.E.2d 200 (Ga. 2003) (ruling that an acquisition value property tax scheme was valid under both equal protection and right to travel analyses pursuant to *Nordlinger*; concluding that nothing in the tax scheme "treats new arrivals to the County any differently from long-term County residents seeking to purchase a home there").

Petitioners also ignore the fact that *Nordlinger*, containing the very same acquisition value taxing caps and portability as Florida's plan here, was decided *ten years after Zobel*. *Nordlinger* was delivered by Justice Blackmun, who had joined Justice Brennan's *Zobel* concurrence cited by Petitioners. Justice O'Connor also joined the majority opinion in *Nordlinger*. 505 U.S. at 3. Even with the knowledge of its own precedents, the Court did not strike California's taxing scheme, nor even discussed whether

it should be stricken based on *Zobel*, aside from the Court's determination that the petitioner lacked standing to assert a Right to Travel argument. Similarly, *Saenz*, decided seven years after *Nordlinger*, fails to mention that case at all.

Petitioners do not actually object to any express discrimination. Instead, Petitioners complain about the disparity created, not by way of any discrimination in the application of the provisions of the law to new residents, but based on the interaction of the Florida law with the private real estate market. Because any benefit provided by the SOHA is determined by the real estate market in any given year, the assessed value is not predictable, and any benefit received is not proportional to residency. In some cases, no benefit at all will be provided. For example, in a down market, the Florida Department of Revenue's "recapture rule" requires property appraisers to increase the assessment by either three percent or the percentage change in the Consumer Price Index in any year that the property's just value exceeds its assessed value, regardless of whether there has been an increase in just value. Fla. Admin. Code R. 12D-8.0062. This could result, over time, in an equalization of the just value and assessed value, so that no actual "benefit" is provided by the SOHA cap. In sum, Petitioners' complaint is not that they are being treated unfairly by Florida law, but rather by the real estate market.

2. RATIONAL BASIS ANALYSIS WAS PROPERLY APPLIED BELOW.

Because this case is controlled by *Nordlinger* and *Reinish*, and not by any right to travel case such as *Saenz*, the Florida courts correctly used the rational basis standard of review. Although freedom to travel is recognized as a fundamental right under the United States Constitution, SOHA and Amendment 1 in no way impede that right. *Reinish*, 765 So. 2d at 207-210; *see also, Soto-Lopez*, [illegible] U.S. at 905 ("only where a State's law 'operates [illegible] penalize those persons . . . who have exercised their constitutional right to interstate migration' is heightened scrutiny triggered."); *Mem'l Hosp.*, 415 U.S. at 258 (same). The right "to take, hold and dispose of property, either real or personal; and an exemption from higher taxes or impositions than are paid by the other citizens of the state" is protected by the Privileges and Immunities Clause. *Reinish*, 765 So. 2d at 209. However, Petitioners' claim is more along the line of an Equal Protection Clause claim, and not one related to their ability to move freely across state borders and be treated the same as citizens therein, bringing into question issues of national equality. *See Baldwin v. Fish & Game Comm'n of Montana*, 436 U.S. 371, 383 (1978) ("Only with respect to those 'privileges' and 'immunities' bearing upon the vitality of the Nation as a single entity must the State treat all citizens, resident and nonresident, equally."). In

that context, the question becomes whether the difference in taxation treatment is discriminatory against non-residents, *Shaffer v. Carter*, 252 U.S. 37, 53 (1920), and clearly here it is not.

As there is no durational residency requirement within SOHA or Amendment 1, under the Equal Protection analysis framework, all that is required is that Florida have a rational basis for its plan. *Nordlinger*, 505 U.S. at 11. This Court determined that the policy concerns in *Nordlinger*, which mirror those here, were "exceedingly persuasive," and that classifications serving to protect legitimate expectation and reliance interest do not deny equal protection of the laws. *Id.* at 13 (citing *Heckler v. Mathews*, 465 U.S. 728, 746 (1984)). Florida's property tax system is designed to "promote the stability and welfare of the state by encouraging property ownership" to protect the family from economic misfortune. *Reinish*, 765 So. 2d at 206-207 (citations omitted). The State aims to promote and protect taxpayers' financial ability to purchase and maintain the primary family shelter. *Id.* at 210. At the same time, SOHA and Amendment 1 still provide no greater or lesser benefits to recent Florida immigrants than they do to life-long Florida citizens purchasing their first Florida homestead. This purpose easily satisfies the rational basis standard applied in *Nordlinger* and *Reinish*, and the Florida courts correctly applied that standard in dismissing Petitioners' complaint.

3. AS WAS THE CASE IN *NORDLINGER*, THESE PETITIONERS LACK STANDING TO BRING THIS CLAIM.

In *Nordlinger*, this Court rejected the standing of the petitioner to bring a claim of a violation of the "right to travel doctrine" because the petitioner had already resided in California prior to her purchase of a home, and therefore was not a party who had been "impeded from traveling or from settling in California." 505 U.S. at 10-11. As the Court explained:

> This Court's prudential standing principles impose a "general prohibition on a litigant's raising another person's legal rights." *Allen v. Wright*, 468 U.S. 737, 751, 82 L. Ed. 2d 556, 104 S. Ct. 3315 (1984). *See also Moose Lodge No. 107 v. Irvis*, 407 U.S. 163, 166, 32 L. Ed. 2d 627, 92 S. Ct. 1965 (1972). Petitioner has not identified any obstacle preventing others who wish to travel or settle in California from asserting claims on their own behalf, nor has she shown any special relationship with those whose rights she seeks to assert, such that we might overlook this prudential limitation. *Caplin & Drysdale v. United States*, 491 U.S. 617, 623, n. 3, 105 L. Ed. 2d 528, 109 S. Ct. 2646, 2667 (1989). Accordingly, petitioner may not assert the constitutional right to travel as a basis for heightened review.

Id. at 11.

Just like the petitioner in *Nordlinger*, Petitioners here lack the requisite standing to even raise the question of the right to travel doctrine's applicability. Petitioners summarily claim that their standing is somehow different than that of the *Nordlinger* petitioner because Petitioners describe themselves as "newly migrated resident homesteaders in Florida." (Pet. at 10). However, each of the Petitioners had been in Florida for a number of years prior to the lawsuit.[3] The system of state taxation of homesteads in Florida did not prevent or impede any of the Petitioners from interstate travel or migration, and did not treat them differently once they entered the State from any other Florida resident. Because there is no durational residency requirement for application of the homestead exemption and SOHA cap, at the time each Petitioner moved to Florida and became a homestead owner, each Petitioner received the benefits of the Florida law. (Pet. App. at 12a).

The lack of standing is particularly evident for the Petitioners' challenge to Amendment 1, establishing portability. Each Petitioner was a resident of the state at the time Amendment 1 was approved in

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[3] Petitioner Stanley Chamberlin owned the property in Florida which he eventually homesteaded for *seven years* prior to seeking the state's exemption. (Pet. at 13). Petitioner Deborah Plitnick acquired her homestead parcel in 2004, *three years* prior to joining this lawsuit. (Pet. at 13). Petitioners Robert and Katherine Bruner migrated to Florida in 2005, *two years* prior to bringing the lawsuit. (Pet. App. at 24a).

2008, and therefore had the opportunity to vote on this provision. Thus, these Petitioners have no more claim to standing regarding any interference with the "right to travel" than the *Nordlinger* petitioner, whose claim of standing this Court expressly rejected because she had lived in California prior to bringing suit, and was not impeded in her ability to move to the state and take up permanent residence therein.

The Florida appellate court did not err in rejecting the Petitioners' challenges and no clarification of the law is needed, as the decision in this case is aligned with this Court's decision in *Nordlinger*.

CONCLUSION

Because this Court has already decided a nearly identical case on this issue, and the Florida courts applied that precedent in denying the Petitioners' claims, there is no need for this Court to accept the

Petition. The Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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